

STATE OF SOUTH CAROLINA

(Caption of Case)

Office of Regulatory Staff, Complainant/Petitioner
vs. Quail Pointe Apartments, Defendant/Respondent

Posted: D. Duke

Dept: SA-6

Date: 7-9-08

Time: 8:00

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 228 - 6

2008 JUL - 8 PM 4:39

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(Please type or print)

Submitted by: Scott Elliott

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input checked="" type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input checked="" type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: Extension Request	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	by Consent	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	RETURN DATE: <u>OK D. Duke</u>	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	SERVICE: <u>OK D. Duke</u>	

ORIGINAL

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July 8, 2008

VIA HAND DELIVERY

Mr. Charles L. A. Terreni
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RE: Office of Regulatory Staff v. Quail Pointe Apartments
Docket No. 2007-228-G

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COMMISSION

Dear Mr. Terreni:

Enclosed please find the original and twenty-five (25) copies of the **Direct Testimony of Marc W. Johnson** filed on behalf of Quail Pointe Apartments, LLC in the above referenced docket. By copy of this letter, I am serving all parties of record.

I have enclosed an extra copy of this testimony which I would ask you to date stamp and return to me via my courier.

If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, P.A.



Scott Elliott

SE/jcl

Enclosure

cc: Jeffrey M. Nelson, Esquire, ORS w/enc.
Stephan C. Ouverson, Esquire w/enc.
Corporate Service Company w/enc.

ORIGINAL

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET No.: 2007-228-G

Office of Regulatory Staff

vs.

Quail Pointe Apartments,

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COMMISSION

PREFILED DIRECT TESTIMONY

OF

MARC W. JOHNSON

July 8, 2008

1 **Q. Please state your name and address.**

2 A. My name is Marc W. Johnson. My address is 3928 Ambassador Drive, Palm Harbor,
3 Florida, 34685.

4 **Q. Please state your education and employment background and experience.**

5 A. I attended college at Northeast Louisiana University in Monroe, Louisiana and Southern
6 Illinois University in Carbondale, Illinois. I have owned residential apartment complexes for 20
7 years and in states such as Texas, Kansas, Illinois, Mississippi, Alabama, Georgia, North
8 Carolina, Ohio and South Carolina. I currently own 8 residential apartment complexes for a total
9 of 1,600 apartment units.

10 **Q. What is the purpose of your testimony in this proceeding?**

11 A. The purpose of my testimony is to address the questions raised by the Office of
12 Regulatory Staff and Ms. Cherie L. Holsten in this docket.

13 **Q. Please explain your familiarity with the Quail Pointe Apartments.**

14 A. Quail Pointe Apartments, LLC was formed in April of 2005 to purchase and own the
15 Quail Pointe Apartments, an older apartment complex located near Spartanburg, South Carolina.
16 Quail Pointe Apartments, LLC purchased the apartment complex in April of 2005. At the time
17 the apartment complex was purchased by Quail Pointe Apartments, LLC, the owner or landlord
18 provided natural gas to its tenants for heating, cooking and water heating purposes. At the time
19 Quail Pointe Apartments, LLC purchased the apartment complex, the owner was billing its
20 tenants individually for each tenant's use of natural gas. Natural gas usage was billed separately
21 from rent. As landlord, Quail Pointe Apartments, LLC continued this practice.

22 **Q. Does Quail Pointe, LLC still own the Quail Pointe Apartment complex?**

23 A. No. On or about May 8, 2007, Quail Pointe Apartments, LLC sold the apartment

1 complex to So. Co. Residential Partners, LLC. The last known address that I have for So. Co.
2 Residential Partners, LLC is 620 Park Avenue, #185, Rochester, New York 14607. To the best
3 of my knowledge, So. Co. Residential Partners, LLC continues to own the apartment complex.

4 **Q. To your knowledge, is the current owner of the apartment complex aware of the**
5 **questions raised by the Office of Regulatory Staff over the manner in which the natural gas**
6 **is billed at the apartment complex?**

7 A. Yes. The attorney for Quail Pointe Apartments, LLC has communicated the questions
8 raised by the Office of Regulatory Staff to the attorney for So. Co. Residential Partners, LLC. In
9 addition, Quail Pointe Apartments, LLC has brought a third party complaint against the current
10 owner. In fact, this Commission has caused the answer and third party complaint to be served on
11 So. Co. Residential Partners, LLC.

12 **Q. Have you had an opportunity to read the pre-filed testimony of Brent L. Sires of the**
13 **Office of Regulatory Staff and Ms. Holsten?**

14 A. Yes. I understand the questions raised by the testimony of the Office of Regulatory Staff.
15 However, I do not concede that the questions raised in the pre-filed testimony justify creating a
16 public utility out of the owner of this apartment complex, thereby creating a new, but
17 unnecessary, layer of regulations with respect to these residential apartments.

18 **Q. Please explain what you mean.**

19 A. I am familiar with the laws of South Carolina that protect residential landlords and
20 tenants. The South Carolina General Assembly has enacted the South Carolina Residential
21 Landlord and Tenant Act, a thorough and far reaching set of rights and obligations that protect
22 both the landlord and tenant and provide remedies for both the landlord and tenant for violations
23 of those rights or breaches of any duty imposed by law. For instance, under the South Carolina

1 Residential Landlord and Tenant Act, the natural gas provided the tenants of Quail Pointe
2 Apartments is considered an essential service. Essential services can include sanitary plumbing
3 or sewer services, running water, electricity, and natural gas where it is used for heat, hot water
4 or cooking. S.C. Code Ann. §27-40-210 (17) All South Carolina residential landlords must by
5 statute comply with the requirements of applicable building and housing codes materially
6 affecting health and safety and “maintain in reasonably good and safe working order and
7 condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning and other
8 facilities and appliances... supplied or required to be supplied by him.” S.C. Code Ann. §27-40-
9 440 (a)(1) and (5). If the landlord fails to comply with these comprehensive duties and
10 responsibilities, the tenant is granted the statutory remedies necessary to require the landlord to
11 comply with the law, resort to self-help or terminate the lease. See S.C. Code Ann. §§27-40-610
12 and 27-40-630. With respect to the Quail Pointe Apartments, Piedmont Natural Gas is the public
13 utility that provides natural gas to apartment buildings for the tenants’ use in heating their units,
14 cooking and heating their water. During the period of time that Quail Pointe Apartments, LLC
15 owned the apartment complex, it strived to meet all of its obligations under the South Carolina
16 Residential Landlord and Tenant Act as well as all of the applicable laws of this State.

17 **Q. The Office of Regulatory Staff contends that the owner of Quail Pointe Apartments**
18 **is operating as a public utility in this State. Do you agree?**

19 A. No. This apartment complex is not now nor has ever operated as a public utility. The
20 Quail Pointe Apartments has no monopoly rights over residential apartments in its community.
21 As I stated, Quail Pointe Apartments, LLC, like its seller and its purchaser, owned the buildings
22 in which it provided these essential services to its tenants as required by State law.

23 **Q. Mr. Sires suggests on Page 6 lines 3-5 of his pre-filed testimony that declaring the**

1 owner of Quail Pointe Apartments to be a public utility would provide certain protections
2 for its tenants that they do not have. Do you agree?

3 A. No. As I stated previously the South Carolina Residential Landlord and Tenant Act
4 provides all of the benefits that Mr. Sires and Ms. Holsten urge on this Commission. Not only
5 does the statute set out in detail the protections afforded to tenants under the law but also the
6 statute affords them the right of redress of any protected rights in the courts of this state.

7 Q. Ms. Holsten raises questions about the natural gas facilities and appliances in Quail
8 Pointe Apartments in her testimony. Do you have any observations concerning Ms.
9 Holsten's testimony?

10 A. I am not in a position to address the specifics of Ms. Holsten's testimony because I am
11 not personally familiar with the questions she raises. However, upon the proper showing before
12 a Spartanburg Court, Ms. Holsten would have the right to compel the landlord to comply with
13 the South Carolina Residential Landlord and Tenant Act, resort to self-help or terminate her
14 lease.

15 Q Are there any benefits to the tenants from the natural gas billing system used by the
16 apartment complex?

17 A. Yes. The owner of the apartment complex is legally responsible for paying the natural
18 gas bill to Piedmont Natural Gas. During the period of time that Quail Pointe Apartments, LLC
19 owned the apartment complex, the utility was paid current. The tenants were billed in arrears for
20 their natural gas usage. So the tenants enjoyed natural gas service guaranteed by the landlord.
21 The billing system is designed to "pass through" the natural gas costs to the tenant. The billing
22 system is not designed to pay the landlord a profit on his cost of natural gas. As the landlord,
23 seldom if ever were we paid in full for the tenants' natural gas usage. It was never our intention

1 to make a profit; however, we always suffered a loss on natural gas. As long as the tenants were
2 current on their rent, they would not be evicted. It was always our policy to work with the tenant
3 for payment of his natural gas bill. It makes perfect sense to bill tenants for their actual natural
4 gas usage. Raising the rent so high as to guarantee the landlord's recovery of his entire cost of
5 natural gas payments made to Piedmont Natural Gas may result in the tenants paying more than
6 their fair share of their natural gas use. Moreover, this billing system encourages conservation.

7 **Q. In your experience, do other states treat landlords as public utilities?**

8 A. No. As I have testified, I have owned residential apartments units in a number of states.
9 It is common practice for landlords to bill their tenants separately for water or natural gas. In my
10 own experience, the landlord was not treated as a public utility in the states where I do business
11 or have done business.

12 **Q. Do you have any final thoughts for the Commission?**

13 A. Yes. At no time has the owner of Quail Pointe Apartments, including Quail Pointe
14 Apartments, LLC, acted as a public utility. The South Carolina Residential Landlord and Tenant
15 Act requires landlords to provide their tenants with essential services. Every residential
16 apartment building is constructed with interior piping for water, sewer, conduits for electricity
17 and often piping for natural gas. The existence of those facilities does not make the apartment
18 building owner a public utility. The South Carolina Residential Landlord and Tenant Act
19 imposes the duty upon each landlord to offer essential services in compliance with all safety
20 codes and in compliance with all rental agreements or leases. Billing tenants for essential
21 services such as natural gas does not relegate the owner of an apartment building to that of a
22 public utility. Rent or billing issues are addressed under the South Carolina Residential Landlord
23 and Tenant Act and are contractual issues between the landlord and the tenant. State law

1 provides adequate remedies for Ms. Holsten and others similarly situated. Making landlords
2 public utilities will create additional accounting and other reporting requirements. Moreover,
3 were this Commission to declare landlords to be public utilities, the system of utility regulation
4 will no doubt conflict with the requirements of the South Carolina Landlord and Tenant Act.
5 Making South Carolina landlords public utilities and creating a whole new overlay of regulation
6 on top of the South Carolina Residential Landlord and Tenant Act is unnecessary. I would
7 respectfully urge this Commission to dismiss the petition of the Office of Regulatory Staff in this
8 matter.

9 **Q. Does this conclude your testimony?**

10 **A.** Yes and I thank the Commission for its time.

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CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the Pre-filed Direct Testimony of Quail Pointe Apartments, LLC to the parties, indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Office of Regulatory Staff, Complainant/Petitioner vs. Quail Pointe Apartments, Defendant/Respondent
Docket No. 2007-228-G

PARTIES SERVED:

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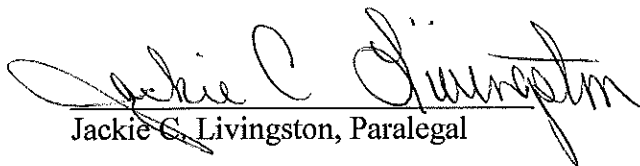
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Jackie C. Livingston, Paralegal

July 8, 2008